

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

.....X

IN RE:

L&L WINGS, INC.,

Chapter 11

Debtor.

.....X

MARCO DESTIN, INC., PANAMA SURF &
SPORT, INC., E&T, INC.,

Appellants,

v.

No. 22-CV-4058-LTS

L&L WINGS, INC.,

Appellee.

.....X

Order

Two related matters are before the Court: this case, originally filed as a bankruptcy appeal, which concerns the bankruptcy court's decision, which the Court treats as Proposed Findings of Fact and Conclusions of Law, sustaining Appellee's claim objection and disallowing Appellants' claim; and a separate civil action filed in this court, see case no. 22-CV-8459-LTS, in which Plaintiffs (Appellants here) bring substantively similar claims against several non-Debtor parties who were or are agents of the Debtor (Appellee here).

The Court notes that, at various points during the litigation of Appellee's claim objection in bankruptcy court, Appellants represented that they sought to assert their claim against the non-Debtor parties only, in district court, and that they did not seek to recover from the Debtor's estate.¹ (See, e.g., Appellants' App'x at 644-52.) In fact, Appellants attempted to

¹ Appellants' claim in L&L Wings' bankruptcy case was estimated at \$0 for voting and

withdraw their proof of claim against the Debtor, although that withdrawal was not effectuated, as Appellants retracted their request or the bankruptcy court denied leave. (See, e.g., Appellants' App'x at 970:23-25, 971:1-8; see also Fed. R. Bankr. P. 3006 (requiring leave of court to withdraw proof of claim after an objection has been filed).) Given the pendency of the separate district court action that encompasses all of the Appellants' relevant claims, the Court now provides Appellants an opportunity to renew their application to withdraw their bankruptcy proof of claim, without prejudice to litigation of the claims against the non-Debtor parties in district court in case no. 22-CV-8459.

The Court, accordingly, directs that, no later than **5:00 p.m., on August 16, 2023**, Appellants must (1) file a motion for withdrawal of their proof of claim and their appeal of the Bankruptcy Court's decision; or (2) file a joint stipulation with Appellee seeking such withdrawal; or (3) inform the Court in writing that they wish to continue the instant litigation as against the Debtor's estate. Should Appellants file a motion for withdrawal, Appellee's response, if any, is due by **5:00 p.m., on August 23, 2023**.

SO ORDERED.

Dated: New York, New York
August 7, 2023

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
Chief United States District Judge

distribution purposes under the Plan, which was later confirmed. (See Appellants' App'x at 828-30.)